APPENDIX 1.

Extracts from the opinion of the Supreme Court of Indiana.

Points 13 and 14 contain all of the opinion of the court below dealing with and disposing of this Petitioner's Motion to Dismiss the Appeal.

We note, however, the opening paragraph of this opinion, which reads as follows:

"The appellee, a stockholder in the appellant corporation, began this action by a complaint in which the appellant corporation and the appellants Sale were made defendants, the latter both as individuals and as officers of the corporation."

We note also the quotation made by the court on page 214 of the Current Advance Report, 46 N. E. (2d):

"that plaintiff sues in his own right as a stockholder, and on and in behalf of said Wabash Valley Coach Co., and all other stockholders therein, except said Defendants, Sales, aforesaid."

We now quote Points 13 and 14 from the court's opinion (Pages 217 and 218):

"This appeal was perfected by the filing of a transcript of the record and an assignment of errors by all of the appellants on April 22, 1942. The same attorneys appeared for all of the appellants, and they were the attorneys of record for all of the appellants, including the corporation, in the court below. Thereafter, in August 1942, the appellee and stockholders of the Wabash Valley Coach Company other than the Sales undertook to hold a stockholders' meeting of the corporation and elect directors and officers upon the theory that the judgment was self-executing and that the shares of dividend stock were void and of no effect. The officers so elected employed an attorney, who filed in this court, in the name of the corporation, under a special appearance, a motion to dismiss the appeal upon the theory that the corporation is not a proper party appellant, that it had not been served with notice, and for other reasons not necessary to notice. It is obvious that the corporation is a mere nominal party, with no interest in the

result of this action, which is a controversy between stockholders. It is further obvious that the motion to dismiss, filed by an attorney assuming to act for the corporation, but employed by the appellee and the other stockholders having an interest adverse to the Sales, is made in the interest of the appellee, and for the purpose of avoiding a determination of the appeal upon its merits. The appeal was perfected as a vacation appeal, and notice to the appellee was given below. If the corporation had been made a party appellee, notice to its attorneys of record below would have been sufficient to give this court jurisdiction. But the corporation appealed in its own right by appearing in this court, through its attorneys of record below, and filing a transcript of the record below, and filing a transcript of the record and a bill of exceptions. That was sufficient to give this court jurisdiction of the person of the corporation. There is no contention that the attorneys who filed the appeal were not then authorized by the then officers of the corporation to appear for the corporation and perfect the appeal for it. No one else could speak for the corporation as of that date. The other parties appellant were not required to take any further steps to bring the corporation into court, and their appeal cannot be defeated by the effort of new and later officers of the corporation to revoke the action of the former officers. The motion to dismiss is lengthy and based upon numerous highly technical contentions, in view of which we note the suggestion that in the court below there was a temporary injunction as follows: "It Is Therefore Ordered Adjudged and Decreed by the court that a temporary injunction be and is granted as prayed by the plaintiff in his petition, in full force and effect, and that said temporary injunction be and is granted under promise and providing that no meetings of the stockholders herein are held, all until the further order of this Court." The final judgment from which the appeal is taken begins: "It Is Therefore Ordered, Adjudged and Decreed by the court that the temporary injunction heretofore granted in this cause be and the same hereby is made perpetual and permanent, and continued in full force and effect." This seems on its face

to preclude a meeting of stockholders. The special appearance and motion to dismiss is ordered stricken from the file.

"The judgment is reversed, with instructions to the trial court to restate its conclusions of law in conformity with this opinion, and to enter judgment for the defendants."

APPENDIX 2.

Indiana Acts of 1921, Chapter 35, Sections 21, 22 and 23.

Sec. 21. No corporation organized hereunder shall have power to prefer any creditor where any director of such corporation is a surety on the indebtedness preferred, or has been a surety on such indebtedness within four months prior to such preference.

Sec. 22. Every stockholder shall be liable to the corporation for the par value of all stock owned by him, unless such stock has been paid for to the corporation at its par value, or unless the articles of incorporation provide that such stock may be sold at more or less than its par value, in which case the owner of stock shall be liable to the corporation only for the amount of the sale price fixed in such articles until such amount has been paid to the corporation.

Sec. 23. No corporation shall declare or distribute any dividend to preferred stockholders or to common stockholders, except from the profits earned by the business of the corporation, and if any such distribution shall be made, the directors shall be personally liable to creditors to the extent of all such distribution, and the stockholders shall be liable to refund such dividend received by them, but nothing herein shall prevent a corporation from paying dividends on its preferred and common stock if it is accumulating, in good faith, a sinking fund sufficient to pay deferred debts, and if there is reason to believe in good faith that it will be able to continue accumulating such funds to pay deferred debts.

APPENDIX 3.

Indiana Acts of 1921, Chapter 206, Sections 1 and 2.

Sec. 1. Be it enacted by the general assembly of the State of Indiana, That it shall be unlawful for any person, firm, company, corporation or association, except while in the process of dissolution, to declare or pay any dividends on any stock issued by, such person, firm, company, corporation or association out of any funds derived from the sale of stock, or out of any other funds, belonging to such person, firm, company, corporation or association, except actual net earnings, surplus or undivided profits.

Sec. 2. Any such person, member of a firm or company, or director of such corporation or association who shall vote for or assent to the payment of any such dividends to any such person above referred to, out of any other funds except actual net earnings, surplus or undivided profits shall be personally liable for twice the total amount of such dividends and also for a reasonable attorney fee for recovering the sum, which suit may be brought by the State of Indiana, on the relation of the prosecuting attorney or on the relation of any person financially interested in said matter.